IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

MFA.No. 620 of 2002(C)

OPMV.54/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM

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APPELLANT: PETITIONER

SAMATHAN(MINOR), REPRESENTED BY
GUARDIAN FATHER GOPALAKRISHNAN, RESIDING AT
PATHIYADIYIL HOUSE, CHERPLACHERY AMSOM,
PANNIAMKURUSSI DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SHAMIER MARICKAR
SMT.M.R.VALSA

RESPONDENTS: RESPONDENTS

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1. SASIKUMAR, S/O.RAGHAVAN, RESIDING AT
MANAMPALLIYAYIL HOUSE, MULAYANKAVU P.O.,
VALLAPPUZHA.

2. HARIDASAN, S/O.CHAMI,
RESIDING AT VALLAVATT HOUSE,
MANNANGODE, PILLASSERI.

3. NATIONAL INSURANCE COMPANY LTD.,
REPRESENTED BY THE BRANCH MANAGER,
BRANCH OFFICE, MANJERI.

BY ADV. SRI.RAJAN P.KALIYATH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T.SANKARAN, J

M.F.A.No. 620 of 2002

Dated this the 11th day of January, 2007

JUDGMENT

The appellant, a minor sustained injuries in a road accident on 7.9.1997 at 13.30 hours. It is stated in the claim petition that on 7.9.1997, the appellant and his brother along with some other children were sitting inside the autorikshaw in question parked in front of the house of the minor appellant. The driver of the autorikshaw, the first respondent, took the autorikshaw suddenly and drove the vehicle to the public road. The appellant and others could not get down from the vehicle. The vehicle was driven by the first respondent in a rash and negligent manner. The appellant minor tried to get down from the Autorikshaw and he was thrown out from the vehicle and sustained injuries. The second respondent is the registered owner of the vehicle. It was contended that the third respondent is the insurer of the vehicle. It is further stated in the claim petition thus: “The vehicle involved in the accident was insured with the third respondent as

per cover note No.73686, which was valid from 8.9.1997 to 7.9.1998." In column 15 of the claim petition, it is stated that the vehicle was not registered at the time of the accident. The appellant claimed a sum of Rs.85,300/- as compensation.

2. Before the Tribunal, no oral evidence was adduced. The Tribunal held that the accident occurred due to the rash and negligent driving of the first respondent, relying on Ext. A1 FIR, Ext. A2 scene mahazar and Ext. B1 charge sheet. It was held by the Tribunal that the appellant is entitled to get a sum of Rs.6,150/- with interest as compensation. As regards the liability of the insurance company, the Tribunal held that Ext. B2 had validity only from 8.9.1997 while the accident occurred on 7.9.1997. Therefore, on the date on which the accident occurred, there was no valid insurance policy covering the vehicle. There is no material to come to the conclusion that there was valid coverage on the date of the accident. Even the claim petition filed by the appellant would indicate that the cover was not valid from 8.9.1997 onwards. Therefore, the Tribunal was justified in holding the third respondent insurance

company is not liable at all.

3. As regards the quantum of compensation, it is submitted by the appellant that the amount awarded is low. It is stated in column No. 14 of the claim petition thus : disability if any caused (1) disability to chew (2) disability to speak properly. No evidence was adduced by the appellant and the doctor who treated the appellant was also not examined. It is submitted by the learned counsel for the appellant that the appellant may be afforded an opportunity to adduce evidence, in the facts and circumstances of the case. Taking into account the facts and circumstances of the case, I am inclined to grant an opportunity to the appellant to adduce evidence before the Tribunal to substantiate this claim for compensation.

4. In the result, the appeal is partly allowed. The award passed by the court below is set aside to the limited extent of granting an opportunity to the appellant to adduce evidence and prove the eligibility to get higher amount of compensation than the compensation now awarded. The finding of the Tribunal that the third respondent is not liable as there was no valid insurance

coverage is upheld. If no further evidence is adduced before the Tribunal, the award now passed by the Tribunal shall stand confirmed. If the appellant were to adduce evidence and convince the Tribunal that he is entitled to more amount, the Tribunal shall consider the same and pass appropriate award in accordance with law.

MFA is disposed of as above.

K.T.SANKARAN,
JUDGE

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